

JEFFREY S. BUCHOLTZ
Acting Assistant Attorney General
SCOTT N. SCHOOLS
United States Attorney
R. MICHAEL UNDERHILL
Attorney in Charge
West Coast Office
JEANNE M. FRANKEN
Trial Attorney
U.S. Department of Justice
Torts Branch, Civil Division
450 Golden Gate Avenue, Room 7-5395
P.O. Box 36028
San Francisco, California 94102-3463
Telephone: (415) 436-6644
Telefax: (415) 436-6632
E-mail: jeanne.franken@usdoj.gov

Of Counsel:
PATRICIA E. BYRNE
Attorney Adviser
Office of Chief Counsel
Maritime Administration
U.S. Department of Transportation
400 Seventh Street, SW, Room 7313
Washington, D.C. 20530
Telephone: (202) 366-5172

Attorneys for Plaintiff
United States of America

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,)	Civil No.: CV07-6162 BZ
)	
Plaintiff,)	AT LAW AND IN ADMIRALTY
)	
v.)	NOTICE AND APPLICATION
)	FOR ORDER APPOINTING
Tackle, apparel, furnishings, spares, tools,)	SUBSTITUTE CUSTODIAN
equipment and certain other appurtenances of)	
the SS INDEPENDENCE (O.N. 261147),)	
<u>in rem</u> ,)	
)	
Defendant.)	

Plaintiff, United States of America, hereby applies to this Court for an Order directing

NOTICE AND APPLICATION FOR
ORDER APPOINTING
SUBSTITUTE CUSTODIAN

1 the United States Marshal for this District to transfer custody of the above-named defendant
2 vessel tackle, appurtenances, etc., immediately after arrest to the custody of Henry D. Ryan,
3 Ship Operations and Maintenance Officer, Division of Pacific Operations, United States
4 Department of Transportation, Maritime Administration ("Marad"). Mr. Ryan has agreed
5 to act as substitute custodian for the aforesaid items in his official capacity and in lieu of the
6 United States Marshal while said items remain in custodia legis and until further order of this
7 Court, as more fully described in his Declaration which is being submitted in support of this
8 Application.

9 The aforesaid defendant vessel tackle, appurtenances, etc., have been held in a locked
10 safe at Marad's office in San Francisco, California, and in a secure warehouse in Alameda,
11 California, both of which are within this District and within the jurisdiction of this Court.
12 By appointing Mr. Ryan as substitute custodian, the items will be able to remain where they
13 have been held in safekeeping for several years and will not have to be moved. The
14 requested appointment will also allow immediate turnover of the items to Marad by the
15 Marshal upon their arrest, thereby maintaining the same level of safekeeping as is currently
16 being provided to them. Further, significant savings will result by avoiding the cost of
17 having a deputy watching the items.

18 Plaintiff United States further requests that the expenses of the United States Marshal,
19 the United States, and the substitute custodian in safekeeping and maintaining the defendant
20 vessel tackle, appurtenances, etc., in custodia legis be declared administrative expenses to
21 be paid prior to their release or the distribution of the proceeds of their sale, all in accordance
22 with the rule of New York Dock Company v. Steamship Poznan, Inc., et al., 274 U.S. 117
23 (1927).

24 ///

25 ///

26 ///

1 This Application is based upon the matters asserted herein, the Declaration submitted
2 in support hereof, the proposed Order filed herewith, and the Court's official file on this
3 matter.

4 PRESENTED BY:

5 DATED: March 7, 2008

JEFFREY S. BUCHOLTZ
Acting Assistant Attorney General
SCOTT N. SCHOOLS
United States Attorney
R. MICHAEL UNDERHILL
Attorney in Charge
West Coast Office

9
10 /s/ Jeanne Franken

JEANNE M. FRANKEN
Trial Attorney
U.S. Department of Justice
Torts Branch, Civil Division

12 OF COUNSEL:
13 PATRICIA E. BYRNE
Maritime Administration
14 U.S. Department of Transportation

15 Attorneys for Plaintiff
United States of America
16
17
18
19
20
21
22
23
24
25
26